

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 809 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

SNEHLATA GOKALDAS

Versus

KANTILAL VASANTLAL

Appearance:

MR SN SHELAT for Petitioners

MR BHARAT J SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/02/99

ORAL JUDGEMENT

This is landlord's revision under section 29(2)
of the Bombay Rent Control Act,1947.

The list was revised four times but none appeared from the side of the revisionist. As such, learned Counsel for the revisionist no.1 was heard and the judgment under revision has been examined.

The brief facts giving rise to this revision are that according to the revisionist-landlord originally agricultural land was let out but subsequently the said land was declared as non agricultural land and constructions were raised thereon. The property was required for personal and bonafide requirement of the landlord. Accordingly, the suit for possession was filed.

The suit in brief was contested on the ground that originally agricultural land was let out but subsequently in revenue litigation right from the stage of Mamlatdar upto Gujarat Revenue Tribunal the respondents were declared deemed purchasers of specified portion of agricultural land. They paid price of the land. The amount was accepted by the plaintiff-landlord. Still the suit was filed for eviction of the respondents which is said to be not maintainable in Civil Court for two reasons. The first is that after declaration that the respondents are deemed purchasers of the disputed property, the relationship of landlord and tenant between the parties came to an end. Hence no suit for eviction under Bombay Rent Act could be filed. The second ground is that because the matter was adjudicated by the revenue authorities right from Mamlatdar upto Gujarat Revenue Tribunal and it has been held that the land is still agricultural land, hence the suit for eviction and possession could not lie before the Court below and that the Civil Court had no jurisdiction to entertain such suit.

The Trial Court framed three preliminary issues. The first was whether it had jurisdiction to try the suit. The second was whether the provisions of Bombay Rent Act are applicable to the suit property and the third was whether there was subsisting relationship of landlord and tenant between the parties.

The finding of the Trial Court on these issues was that it had no jurisdiction to try the suit and that the provisions of Bombay Rent Control Act are not applicable to the suit property and after declaration that the respondents are deemed purchasers of the property in dispute, the relationship of landlord and tenant between the parties came to an end. Accordingly the suit was dismissed.

An appeal was preferred which was dismissed. Hence this revision.

After examining the judgments of the two Courts below I find that both the Courts have recorded concurrent findings on question of law and those findings do not suffer from any manifest error of law. As such, it can be said that the judgments and decrees of the two Courts below are in accordance with law.

There seems to be no merit in the plea of the revisionist that because the parties entered into compromise before the Gujarat Revenue Tribunal and the case was decided by the Gujarat Revenue Tribunal on the basis of the compromise, it is not binding on the revisionists simply because they were not parties before the Tribunal or before the Mamlatdar or before the Appellate Authority. The two Courts below have rightly observed that no writ petition or revision was filed in this Court challenging the order of the Mamlatdar or the order of the Appellate Authority. The revisionist however, filed Regular Suit No. 110 of 1973 in the Civil Court for declaration that the order dated 3.7.1972 on compromise from Gujarat Revenue Tribunal is illegal and not binding upon them. They also applied for injunction. However, the suit was dismissed by the Civil Court on 23.8.1978. An appeal was preferred which on the date of decision of the suit before the Court below was pending. The learned Counsel for the respondent has informed that the appeal was also dismissed and Second Appeal is pending in this Court. Similarly, on account of pendency of Second Appeal, it cannot be said that the Court below had jurisdiction to entertain and decide the suit of the nature which was filed by the plaintiff-revisionist. Both the Courts below have rightly concluded that initially agricultural land was let out and subsequent change or conversion of agricultural land into non agricultural land could not change the nature of original transaction. The defendants were declared as deemed purchasers under section 32(G) of the Bombay Tenancy Act. They had paid the price and the said price was received and accepted by the plaintiffs from the tenancy court. The plaintiff also applied for enhancement of the price because certain structures were standing over the land. Superstructures were however raised by the defendant no.1 on the suit land. No doubt, the proceedings before the Revenue Tribunal were between the defendant no.1 and Maganlal Chhotubhai who are heirs of defendants no. 2 to 6, but this per se will not render the order of the Revenue Tribunal based on compromise illegal or invalid. Unless this order of the Revenue Tribunal is set aside either through a writ of certiorari or in Second Appeal as informed by the learned Counsel for the respondent the said order has prima facie force at the moment or at the

time when the suit was decided. On these facts it can be said that the Trial Court had no jurisdiction to entertain and decide such suit. Neither the Civil Court nor the Court of Small Causes on these facts and circumstances could have jurisdiction to deal with such matters which are apparently falling under the provisions of the Bombay Tenancy Act. The jurisdiction of the Civil Court as well as the Court of Small Causes under these circumstances is barred by section 85 of the Bombay Tenancy Act. The question as to who is tenant of the agricultural land is to be decided by the revenue authorities and not by the Court of Small Causes. Consequently, prima facie the suit could not be filed for possession against the respondents in the Court of Small Causes. The two Courts below, therefore, committed no illegality in concluding and coming to the finding that the Courts below had no jurisdiction to entertain and decide the suit.

If the Courts below had no jurisdiction to entertain and decide such suit, the subsequent question need not be answered in detail. Suffice it to say that after declaration by the revenue authorities that the respondents have become deemed purchasers their original status of tenants came to an end and in view of this change of status it can safely be said that the relationship of landlord and tenant between the parties came to an end. If this is so, then even if with any stretch of imagination the suit could lie in the Court of Small Causes, it was bound to fail because there was no relationship of landlord and tenant between the parties.

The third question also had to be answered like this that if the Courts below had no jurisdiction to entertain the suit of such nature the provisions of Bombay Rent Control Act, 1947 would hardly be applicable. Thus, there is no merit in this revision which is hereby dismissed. No order as to costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt